



#8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: )  
)  
John D. DIDOMENICO, *et al.* ) Group Art Unit: 2878  
)  
Serial No.: 09/818,664 ) Examiner: Not yet assigned  
)  
Filed: March 28, 2001 )  
  
For: EXHAUST OPACITY MEASURING DEVICE

PETITION UNDER 37 C.F.R. § 1.47(a)

Attn: Petitions Branch  
Box DAC  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

This Petition Under 37 C.F.R. § 1.47(a) is being filed in response to the Notice to File Missing Parts, mailed March 2, 2001. The following materials are enclosed.

1. a petition fee of \$130;
2. a Declaration signed by CRAIG S. RENDAHL, DONALD H. STEDMAN and GARY A. BISHOP and including the last known addresses of the non-signing inventors;
3. Statement Of Facts in support of filing on behalf of the nonsigning inventors.

Two of the named inventors in this application, JOHN D. DIDOMENICO and JAMES H. JOHNSON, have refused to execute the Oath or Declaration necessary to complete the filing or cannot be located. Therefore, **Environmental Systems Products, Corp. (ESP)**, the rightful owner of the entire right title and interest of the present application have filed this Petition in accordance with 37 C.F.R. § 1.47 and MPEP §§ 409.01-409.03(j).

BEST AVAILABLE COPY

MR. DIDOMENICO AND MR. JOHNSON were employees of the predecessors in interest to **ESP** (referred to herein as **ESP**). During their tenure, MR. DIDOMENICO, MR. JOHNSON, DR. STEDMAN, DR. BISHOP AND MR. RENDAHL developed the invention that is the subject of the present application. A provisional patent application (serial no. 60/111,959), from which the present application claims priority, was filed on **December 11, 1998**. Subsequent to that date, MR. DIDOMENICO AND MR. JOHNSON terminated their employment with ESP.

ESP respectfully submits that the Statement of Facts show that, since leaving ESP, MR. DIDOMENICO has refused, either explicitly or by conduct, to execute the application papers and MR. JOHNSON either cannot be located or by conduct is refusing to execute the application papers. The particulars of the refusal and inability to locate are set forth in the enclosed Statement of Facts.

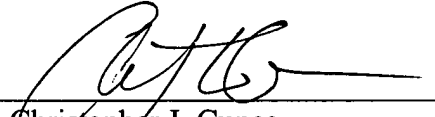
For at least the foregoing reasons, **ESP** respectfully requests that the present Petition be granted.

Respectfully submitted,

Mintz Levin Cohn Ferris Glovsky and Popeo, PC

Dated: November 29, 2001

By:

  
Christopher J. Cuneo  
Registration No. 42,450

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO, PC  
11911 Freedom Drive, Suite 400  
Reston, VA 20190  
Telephone (703) 464-8159  
Facsimile (703) 464-4895

RES 48238v1



Patent  
Attorney Docket No.: 23439-032-402

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANTS : JOHN DiDOMENICO, et al.  
SERIAL NUMBER : 09/818,664 EXAMINER : Not assigned  
FILING DATE : March 28, 2001 ART UNIT : 2878  
FOR : EXHAUST OPACITY MEASURING DEVICE

**BOX MISSING PARTS**

Assistant Commissioner for Patents  
Washington, D.C. 20231

**RESPONSE TO NOTICE TO FILE MISSING PARTS**

Sir:

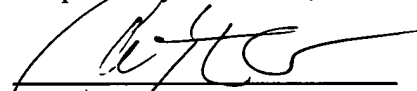
In response to the Notice To File Missing Parts ("Notice") mailed May 31, 2001, Applicants submit herein payment of the surcharge fee (\$130.00) set forth in 37 CFR 1.16(e). Additionally, Applicants respectfully petition for an extension of time of four (4) months (under separate cover, under the provisions of 37 C.F.R. §1.136(a), thereby extending the period for response to November 30, 2001. A check in the amount of \$1,700.00 is submitted herewith, representing the surcharge fee of \$130 and the five (5) month extension of time fee in accordance with 37 C.F.R. §1.17(a)(5). Thus, Applicants submit that this response is timely filed.

Also submitted herein is a Petition Under 37 C.F.R. § 1.47(a) To Complete Filing Requirements When An Inventor Refuses To Sign Or Cannot Be Reached, together with a copy of the Notice to File Missing Parts. Also submitted herein is a Declaration and Power of Attorney executed by three (3) of the five (5) named inventors, together with a copy of the Notice to File Missing Parts.

Please charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. 23439-032-402.

Date: November 29, 2001

Respectfully submitted,

  
Christopher J. Cuneo  
Registration No. 42,450  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
11911 Freedom Drive, Suite 400  
Reston, Virginia 20190  
Telephone (703) 464-8159  
Attorney for Applicants



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: )  
John D. DIDOMENICO, *et al.* ) Group Art Unit: 2878  
Serial No.: 09/818,664 ) Examiner: Not yet assigned  
Filed: March 28, 2001 )

For: EXHAUST OPACITY MEASURING DEVICE

**STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF  
NONSIGNING INVENTORS**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

This statement is made as to the facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the non-signing inventors for the above identified patent application.

Additional facts are set forth below.

I, Christopher Cuneo declare that:

1. On information and belief, John DiDomenico, James H. Johnson and Craig S. Rendahl are all former employees of Envirotech Systems Corporation or related entities (collectively, "ESC").
2. On information and belief, the subject matter of the present invention was filed as a provisional patent application, serial no. 60/111,959, on December 11, 1998 in the names of John DiDomenico, James H. Johnson and Craig S. Rendahl.
3. On information and belief, subsequent to that filing John DiDomenico, James H. Johnson and Craig S. Rendahl all terminated their employment with ESC.
4. On information and belief, Kevin Dunleavy, an agent of the firm previously responsible for the prosecution of this application, sent Ms. Mary Salgado, an

STATEMENT OF FACTS IN SUPPORT OF FILING  
ON BEHALF OF NON-SIGNING INVENTORS  
U.S. PATENT APPLICATION SERIAL NO. 09/818,664  
ATTORNEY DOCKET NO. 23439-032-402  
(FORMERLY 47382.000121)

employee of ESC that was coordinating the procurement of signatures a copy of the application, Declaration and Assignment with a letter dated January 21, 2000. (Attachment A ).

5. On information and belief, the January 21, 2000 letter instructed Ms. Salgado to procure the signatures of the inventors, including Mr. James H. Johnson and Mr. John DiDomenico, on the Declarations for patent application for the present invention.
6. On information an belief, Ms. Salgado was unable to obtain Mr. James H. Johnson's and Mr. John DiDomenico's signature.
7. On information and belief, Kevin Dunleavy sent Mr. James H. Johnson a copy of the application, Declaration and Assignment with a letter dated April 12, 2000. (Attachment B ). *Parent file*
8. On information and belief, Kevin Dunleavy again sent Mr. James H. Johnson copes of the application, Declaration and Assignment to the last known address for Mr. Johnson: 7887 N. La Cholla, Apt. 1117, Tuscon, AZ, 85741. (Attachment C ). *Parent file*
9. On information and belief, to date Mr. James H. Johnson has not responded to either letter sent by Mr. Dunleavy.
10. On information and belief, on January 23, 2001, Devin S. Morgan, an agent of the firm previously responsible for the prosecution of this application, sent a letter by certified mail to Mr. James H. Johnson. (Attachment D).
11. On or about January 25, 2001 Mr. Morgan's letter to Mr. Johnson was returned due to an expired forwarding order. (Attachment E).
12. On November 21, 2001 I sent Mr. James H. Johnson another copy of the application, Declaration and Assignment for the present application. (Attachment F).

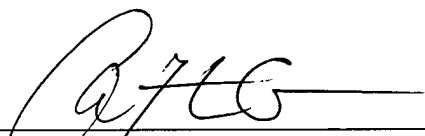
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ON BEHALF OF NON-SIGNING INVENTORS  
U.S. PATENT APPLICATION SERIAL NO. 09/818,664  
ATTORNEY DOCKET NO. 23439-032-402  
(FORMERLY 47382.000121)**

13. To date, Mr. James H. Johnson has not responded to my letter.
14. On information and belief, John DiDomenico terminated his association with ESC and joined SPX Corporation ("SPX").
15. On information and belief SPX employs Mr. DiDomenico to develop products intended to compete with ESC products.
16. On information and belief, Kevin Dunleavy sent Mr. John DiDomenico a letter, dated June 16, 2000, enclosing a copy of the application, Declaration and Assignment for the present invention. (Attachment G).
17. On information and belief, on July 14, 2000, Mr. John DiDomenico sent Kevin Dunleavy an electronic mail message indicating that he had received the documents and that he would try to review the application and sign the application papers by the following Monday. (Attachment H).
18. On information and belief, Mr. John DiDomenico did not return executed application papers in July of 2000.
19. On or about September 21, 2000, I contacted John DiDomenico via electronic mail in order to renew discussions about executing the declaration for patent application.
20. On September 21, 2000 John DiDomenico sent an electronic mail message to me indicating that he not be contacted at addresses associated with SPX. (Attachment I).
21. In response to John DiDomenico's September 21, 2000 electronic mail, I attempted to contact John DiDomenico to establish an address at which he would receive correspondence. Mr. DiDomenico never supplied such an address.
22. On information and belief, on January 23, 2001 Devin Morgan sent a letter to John DiDomenico via certified mail to Mr. DiDomenico's last known home address. (Attachment J).

STATEMENT OF FACTS IN SUPPORT OF FILING  
ON BEHALF OF NON-SIGNING INVENTORS  
U.S. PATENT APPLICATION SERIAL NO. 09/818,664  
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(FORMERLY 47382.000121)

23. On information and belief, the letter was returned on or about February 2001 with the envelope marked as "unclaimed." (Attachment K).
24. On November 21, 2001 I sent Mr. John DiDomenico another copy of the application, Declaration and Assignment for the present invention.  
(Attachment R).<sup>1</sup>
25. A return receipt post card was received by my firm on November 29, 2001, with Tracie L. Jaeger confirming receipt of letter on November 26, 2001 (Attachment S).
26. To date, Mr. John DiDomenico has not responded to my letter.
27. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: November 29, 2001

  
\_\_\_\_\_  
Christopher Cuneo  
Reg. No. 42,450

RES 48246v1

<sup>1</sup> There is no Attachments L through Q. Attachment R should follow Attachment K.



## INDEX

- TAB A: January 21, 2000 – Letter to Mary Salgado of ESP from Hunton & Williams (prior attorneys of record) regarding new patent application filed on January 11, 2000.
- TAB B: April 12, 2000 – Letter to James H. Johnson (named inventor) from Hunton & Williams regarding duty to disclose information.
- TAB C: June 8, 2000 – Letter to James H. Johnson from Hunton & Williams regarding duty to disclose information
- TAB D: January 23, 2001 – Letter to James H. Johnson from Hunton & Williams requesting assistance
- TAB E: Copy of certified mail receipt and copy of envelope indicating letter of January 23, 2001, has been returned to sender (Hunton & Williams)
- TAB F: November 21, 2001 – Letter to James H. Johnson from Mintz Levin Cohn Ferris Glovsky and Popeo (present attorneys of record) requesting execution of Declaration and Power of Attorney and Assignment documents with a copy of the certified mail receipt
- TAB G: June 16, 2000 – Letter to John DiDomenico (named inventor) from Hunton & Williams requesting execution of Declaration and Assignment documents.
- TAB H: July 14, 2000 – E-mail from John DiDomenico to Kevin Dunleavy (of Hunton & Williams) regarding execution of Declaration and Assignment documents.
- TAB I: September 21, 2000 – E-mail from John DiDomenico to Chris Cuneo (attorney @ Hunton & Williams) and Craig Rendahl (named inventor) requesting no communications be sent to SPX Corporation.
- TAB J: January 23, 2001 – Certified letter to John DiDomenico from Devin Morgan (of Hunton & Williams) requesting assistance.
- TAB K: Copy of certified receipt and copy of envelope indicating that January 23, 2001 Letter to John DiDomenico was unclaimed
- NO TABS L-Q
- TAB R: November 21, 2001 – Certified letter to John DiDomenico from Christopher Cuneo (of Mintz Levin Cohn Ferris Glovsky and Popeo) enclosing patent application and requesting execution of Declaration and Power of Attorney and Assignment documents.
- TAB S: Copy of certified mail return receipt card signed on behalf of John DiDomenico by Tracie L. Jaeger on November 26, 2001 confirming receipt of November 21, 2001, letter.



A

# HUNTON & WILLIAMS

ATLANTA, GEORGIA  
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BRUSSELS, BELGIUM  
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LONDON, ENGLAND

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KEVIN J. DUNLEAVY  
E-MAIL: KDUNLEAVY@HUNTON.COM

FILE NO.: 47382.000039  
DIRECT DIAL: (216) 955-1928

January 21, 2000

· via UPS

Ms. Mary Salagado  
ESP  
2002 N. Forbes Boulevard  
Tucson, AZ 85745-1446

Re: New United States Patent Application  
"REMOTE VEHICLE EMISSION SENSING DEVICE WITH SINGLE  
DETECTOR"

Dear Ms. Salagado:

This letter is to advise that we have filed a patent application with the United States Patent and Trademark Office on January 11, 2000. A copy of the application as filed enclosed for your records.

Please also find enclosed a declaration and assignment to be completed by the named inventors. Please arrange to have the documents signed by Donald Stedman, Gary Bishop, John DiDomenico, and James Johnson. The assignment will need to be notarized as well. Please return the signed and notarized documents at your earliest convenience.

The next requirement in the prosecution of the above-referenced application is the filing of an Information Disclosure Statement. The Patent and Trademark Office rules impose on each individual associated with filing and prosecution of a patent application a continuing duty to disclose all information known to be material to the patentability of a pending claim. The duty continues until the claim is canceled or withdrawn or the patent issues. A detailed discussion of what is required to be disclosed and when it must be disclosed is set forth in the attached memorandum.

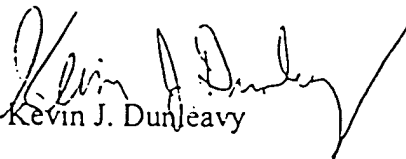
All material information should be submitted to the Patent Office within three months of the filing date or before the first Patent Office action on the merits, whichever is later. To avoid paying fees for late disclosure, it is important for you to provide us with any information which you think may be material, in a timely fashion, so that we can evaluate and disclose it within the required time periods. If there is any doubt as to whether something is material, we recommend that such doubt be resolved in favor of disclosure. Therefore, your prompt response would be appreciated.

HUNTON & WILLIAMS

Ms. Mary Salgado  
January 21, 2000  
Page 2

We appreciate the opportunity to assist you in the preparation and prosecution of this application and will continue to keep you informed as to its status. As always, if you have any questions, please feel free to call at your convenience.

Very truly yours,

  
Kevin J. Dunleavy

KJD/DSM:dmo  
Enclosure

# HUNTON & WILLIAMS

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RICHMOND, VIRGINIA  
WARSAW, POLAND

DIRECT DIAL: (202) 955-1928  
FILE NO.: 47382.000039  
47382.000041  
47382.000102

April 12, 2000

**CONFIDENTIAL**

Mr. James H. Johnson  
4401 West Crestview Road  
Tucson, Arizona 85745

## **Re: Duty To Disclose Information To The United States Patent And Trademark Office**

Dear James:

As you know, Envirotest has filed the following patent applications for which you are named as an inventor: (1) Application Serial No. 09/480,688, titled, "Remote Vehicle Emission Sensing Device With Single Detector," (2) Application Serial No. 09/457,391, titled, "Exhaust Opacity Measuring Device," and (3) Application Serial No. 09/520,166, titled, "Remote Emissions Sensing System With Improved NOx Detection." Under U.S. law, the inventors are obliged to sign a Declarations for Patent Application for each application. In addition, as part of the agreement you signed when your were hired, you are obliged to execute an Assignment of your rights in the patent application to Envirotest Systems Corp.

The purpose of this letter is to forward the Declarations, Assignments and patent applications to you for review and signature and to address some of the issues relating to you having to sign the Declarations for Patent Application. In this letter, I have provided you with detailed information regarding the duty of disclosure and I address your obligation to ensure the factual accuracy of the patent application.

### **Duty of Disclosure**

The duty to disclose information to the United States Patent and Trademark Office ("PTO") arises out of the requirements of 37 C.F.R. § 1.56 -- Duty to Disclose Information Material to Patentability ("Rule 56"). This rule is reproduced in Chapter 2000 of the Manual of Patent Examining Procedure, which is attached, for your convenience, as Appendix A.

Rule 56 imposes on each individual associated with filing and prosecution of a patent application a continuing duty to disclose all information known to be material to the patentability of a pending claim. The duty continues until the claim is canceled or withdrawn or the patent issues. The claims of the patent applications are the numbered paragraphs found on the last few pages of the application text. A detailed discussion of what is required to be disclosed and when it must be disclosed is set forth in the following paragraphs.

## HUNTON & WILLIAMS

Mr. James H. Johnson  
April 12, 2000  
Page 2

### Duty of Disclosure Requirements

A duty of candor and good faith toward the Patent and Trademark Office ("PTO") rests on each inventor who files a U.S. patent application, on each attorney or agent who prepares or prosecutes such application, and on every other individual who is substantively involved in the patenting process. ALL SUCH INDIVIDUALS HAVE A DUTY TO DISCLOSE TO THE PTO ANY AND ALL "INFORMATION" THEY ARE AWARE OF WHICH IS "MATERIAL" TO THE EXAMINATION OF THE APPLICATION. According to PTO rules, information is "material" if

it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

it refutes, or is inconsistent with, a position the applicant takes in either opposing an argument of unpatentability relied on by the PTO or asserting an argument of patentability.

There is no duty to supply information which is already of record in the application.

The term "information" is used in its broadest sense. It encompasses what is commonly termed "prior art" and any other facts or circumstances which may be relevant. It also includes not only information which came into being before the application was filed, but also knowledge obtained or learned after the filing date. Common types of information which may be material to an application include, but by no means are limited to, the following:

- U.S. and foreign patents;
- Printed publications in the U.S. or foreign literature;
- Knowledge or use by others;
- Commercial activity, such as sales or offers for sale, of the invention;
- Prior inventions by any other inventors;
- Prior related work by the inventors;
- Co-pending applications by the same inventors or assigned to the same assignee;
- Co-pending applications having related subject matter; and
- Prior art cited in any co-pending application filed by the same inventors or assignee and having related subject matter.

Since the PTO expects all applicants to act with full candor, it is important that copies or written descriptions of any and all documents, facts or circumstances which might constitute material information be furnished to the PTO without delay. An appropriate rule of thumb is to disclose even borderline information to the PTO, thereby shifting the burden to the Examiner to decide whether such information is "material." Any other approach may render the patent vulnerable to a later finding of invalidity during the course of any infringement litigation.

## HUNTON & WILLIAMS

Mr. James H. Johnson  
April 12, 2000  
Page 3

Your effort to uncover information material to the patentability of the applications for which you are listed as inventors is appreciated and encouraged. The serious nature of the Rule 56 duty is precisely why so much time was taken during the August 1998 invention disclosure meeting to inquire for each proposed application whether any disclosures, uses, sales, offers for sale, or any other material information existed. It is also why Patent Questionnaires were sent to the inventors before the filing of the utility applications and reminder letters explaining the continuing duty to disclose information to the PTO were sent to Environmental Systems Products ("ESP") (formerly Remote Sensing Technologies, Inc. ("RSTi")) upon the filing of each utility application (exemplary copies attached as Appendix B and Appendix C, respectively).

Once all inventors, assignee and attorneys involved have provided their comments, we will make a determination as to what materials warrant citation to the U.S. Patent Office using the applicable legal standards.

### **Obligation to Ensure Factual Accuracy of the Patent Application**

By signing the Declaration for Patent Application, you swear that the factual information contained in the patent application is, to the best of your knowledge at the time of signing, factually correct.

With regard to the claims of the patent application, there are two reasons to consider the claims:

1. To ensure that you invented the subject matter of at least one claim contained in the patent application since by signing the Declaration you swear that you are the inventor of the subject matter of at least one claim, and
2. To determine what prior art you are aware of may be relevant to the patent application under the criteria set forth above.

Other than as specified above, you should not concern yourself with the scope of the patent claims since the owner of the patent, Envirotech Systems Corp., has the exclusive right to determine the scope of the patent claims that it intends to pursue.

I hope that this letter will simplify your task of reviewing and signing the patent applications. Please feel free to call me if you have any questions.

Best regards.

Sincerely,

Handwritten signature of Kevin J. Dunleavy in cursive script.

Kevin J. Dunleavy

Enclosures

# HUNTON & WILLIAMS

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June 8, 2000

**CONFIDENTIAL**

Mr. James H. Johnson  
7887 N. La Cholla, Apt. 1117  
Tucson, Arizona 85741

**Re: Duty To Disclose Information To The United States Patent And Trademark Office**

Dear Mr. Johnson:

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- (1) Application Serial No. 09/480,688, titled, "Remote Vehicle Emission Sensing Device With Single Detector,"
- (2) Application Serial No. 09/457,391, titled, "Exhaust Opacity Measuring Device," and
- (3) Application Serial No. 09/520,166, titled, "Remote Emissions Sensing System With Improved NO<sub>x</sub> Detection," and
- (4) Application Serial No. 09/579,475, titled, "Multilane Remote Sensing Device."

Under U.S. law, the inventors are obliged to sign a Declaration for Patent Application for each application. In addition, as part of the agreement you signed when you were hired, you are obliged to execute an Assignment of your rights in the patent application to Envirotest Systems Corp.

The purpose of this letter is to forward the Declarations, Assignments and patent applications to you for review and signature and to address some of the issues relating to you having to sign the Declarations for Patent Application. In this letter, I have provided you with detailed information regarding the duty of disclosure and I address your obligation to ensure the factual accuracy of the patent application.

## HUNTON & WILLIAMS

Mr. James H. Johnson  
June 8, 2000  
Page 2

### Declarations and Assignments

I have enclosed four (4) patent applications with accompanying Declarations and Assignments for your review and execution. Please review the guidelines provided in this letter, and the patent applications and then sign, date and notarize the enclosed Declarations and Assignments, as indicated.

If you have any questions, comments, prior art citations or would like to discuss this mater, please feel free to contact me by phone or email.

### Duty of Disclosure

The duty to disclose information to the United States Patent and Trademark Office ("PTO") arises out of the requirements of 37 C.F.R. § 1.56 -- Duty to Disclose Information Material to Patentability ("Rule 56"). This rule is reproduced in Chapter 2000 of the Manual of Patent Examining Procedure, which is attached, for your convenience, as Appendix A.

Rule 56 imposes on each individual associated with filing and prosecution of a patent application a continuing duty to disclose all information known to be material to the patentability of a pending claim. The duty continues until the claim is canceled or withdrawn or the patent issues. The claims of the patent applications are the numbered paragraphs found on the last few pages of the application text. A detailed discussion of what is required to be disclosed and when it must be disclosed is set forth in the following paragraphs.

### **Duty of Disclosure Requirements**

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it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

HUNTON & WILLIAMS

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Page 3

it refutes, or is inconsistent with, a position the applicant takes in either opposing an argument of unpatentability relied on by the PTO or asserting an argument of patentability.

There is no duty to supply information which is already of record in the application.

The term "information" is used in its broadest sense. It encompasses what is commonly termed "prior art" and any other facts or circumstances which may be relevant. It also includes not only information which came into being before the application was filed, but also knowledge obtained or learned after the filing date. Common types of information which may be material to an application include, but by no means are limited to, the following:

- U.S. and foreign patents;
- Printed publications in the U.S. or foreign literature;
- Knowledge or use by others;
- Commercial activity, such as sales or offers for sale, of the invention;
- Prior inventions by any other inventors;
- Prior related work by the inventors;
- Co-pending applications by the same inventors or assigned to the same assignee;
- Co-pending applications having related subject matter; and
- Prior art cited in any co-pending application filed by the same inventors or assignee and having related subject matter.

Since the PTO expects all applicants to act with full candor, it is important that copies or written descriptions of any and all documents, facts or circumstances which might constitute material information be furnished to the PTO without delay. An appropriate rule of thumb is to disclose even borderline information to the PTO, thereby shifting the burden to the Examiner to decide whether such information is "material." Any other approach may render the patent vulnerable to a later finding of invalidity during the course of any infringement litigation.

Your effort to uncover information material to the patentability of the applications for which you are listed as inventors is appreciated and encouraged. The serious nature of the Rule 56 duty is precisely why so much time was taken during the August 1998 invention disclosure meeting to inquire for each proposed application whether any disclosures, uses, sales, offers for sale, or any other material information existed. It is also why Patent Questionnaires were sent to the inventors before the filing of the utility applications and



HUNTON & WILLIAMS

Mr. James H. Johnson  
June 8, 2000  
Page 4

reminder letters explaining the continuing duty to disclose information to the PTO were sent to Environmental Systems Products ("ESP") (formerly Remote Sensing Technologies, Inc. ("RSTI")) upon the filing of each utility application (exemplary copies attached as Appendix B and Appendix C, respectively).

Once all inventors, assignees and attorneys involved have provided their comments, we will make a determination as to what materials warrant citation to the U.S. Patent Office using the applicable legal standards.

Obligation to Ensure Factual Accuracy of the Patent Application

By signing the Declaration for Patent Application, you swear that the factual information contained in the patent application is, to the best of your knowledge at the time of signing, factually correct.

With regard to the claims of the patent application, there are two reasons to consider the claims:

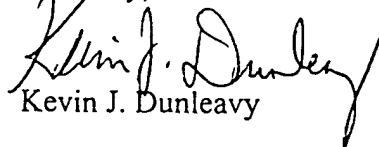
1. To ensure that you invented the subject matter of at least one claim contained in the patent application since by signing the Declaration you swear that you are the inventor of the subject matter of at least one claim, and
2. To determine what prior art you are aware of may be relevant to the patent application under the criteria set forth above.

Other than as specified above, you need not concern yourself with the scope of the patent claims since the owner of the patent, Envirotech Systems Corp., has the exclusive right to determine the scope of the patent claims that it intends to pursue.

I hope that this letter will simplify your task of reviewing and signing the patent applications. Please feel free to call me if you have any questions.

Best regards.

Sincerely,

  
Kevin J. Dunleavy

Enclosures  
KJD/ml

# HUNTON WILLIAMS

1900 K STREET, N.W.  
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500  
FAX 202 • 778 • 2201  
DEVIN S. MORGAN  
DIRECT DIAL: 202 • 955 • 1965  
EMAIL: dmorgan@hunton.com

January 23, 2001

FILE NO: 47382.000060

Via Certified Mail

Mr. James H. Johnson  
4401 W. Crestview Road  
Tucson, AZ 85745

Dear Mr. Johnson;

I am an attorney working for Environmental Systems Products, Inc., the parent company of Envirotest Systems Corp. and other related entities. I am assisting ESP with various matters related to its patent portfolio. During your time as an employee of ESP's family of companies, you were involved in the invention of several new technologies for which ESP is seeking or has sought patent protection. ESP requests your continued assistance in securing its patent rights.

Specifically, ESP needs your assistance reviewing and executing various documents related to patent applications for technologies you assisted in pioneering. Please contact me at your earliest convenience so that we can make arrangements for you to review and execute the necessary documents.

Patent rights and the administrative procedures for securing patent rights are costly and time sensitive. Any delay on your part may generate additional expenses for ESP and could jeopardize the company's valuable patent rights. I understand that you are probably busy with other things, but please make every effort to respond to me as soon as possible. I remind you of your continuing duty, pursuant your former employment, to assist ESP in securing its patent rights.

Thank you for your time and assistance in this matter.

Sincerely,

Hunton & Williams



Devin S. Morgan

PS Form 3800, April 1995

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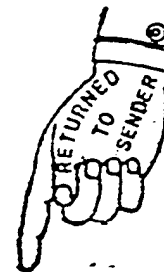
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1900 K STREET, N.W.  
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HUNTON & WILLIAMS

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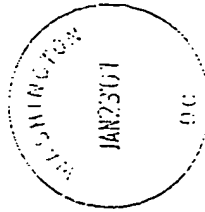
Z 597 422 823

MAIL



*Devon Morgan*

Mr. James H. Johnson  
4401 W. Crestview Road  
Tucson, AZ 85745



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JAN 25 2001

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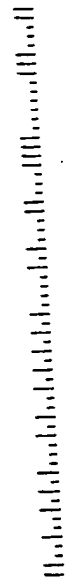
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Washington  
New Haven*

*One Fountain Square  
11911 Freedom Drive  
Reston, Virginia 20190  
703 464 4800  
703 464 4895 fax  
www.mintz.com*

**Christopher Cuneo**

*Direct dial 703 464 8159  
ccuneo@mintz.com*

November 21, 2001

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
TRACKING No.: 7000-1670-0011-9499-6161**

James H. Johnson  
7887 N. Cholla  
Apt. #1117  
Tucson, AZ 85741

Re: U.S. Patent Application Serial No. 09/818,664  
Filed: March 28, 2001, which is a continuation of 09/621,869 filed July  
21, 2000 (abandoned), which is a continuation of 09/457,391 filed  
December 9, 1999 (abandoned), which claims priority from provisional  
application 60/111,959 filed December 11, 1998  
Inventor(s): John DiDomenico *et al.*  
Title: "EXHAUST OPACITY MEASURING DEVICE"  
Our Reference No. 23439-032-402

Dear James:

Enclosed is a copy of a patent application titled "Exhaust Opacity Measuring Device" (as filed) of which you are named as an inventor. Also enclosed are (1) Joint Declaration for Patent Application and Power of Attorney and (2) Assignment documents.

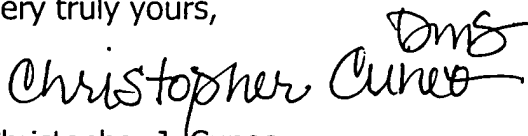
Kindly sign and date both the Declaration and Power of Attorney and Assignment documents and return them to us as soon as possible for filing with the U.S. Patent and Trademark Office. For your convenience, I have enclosed a self-addressed Federal Express envelope for expeditious return.

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

James H. Johnson  
November 21, 2001  
Page 2

If you have any questions regarding this matter, please do not hesitate to contact me at the telephone number listed above.

Very truly yours,

  
Christopher J. Cuneo

JGG/CJC:dms

Enclosures:

- Patent Application titled "EXHAUST OPACITY MEASURING DEVICE"
- Drawing Figures 1-4
- Joint Declaration for Patent Application and Power of Attorney
- Assignment
- Federal Express Return Envelope

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1. Article Addressed to:

James H. Johnson  
7887 N. Cholla  
Apt. #1117  
Tucson, AZ 85741

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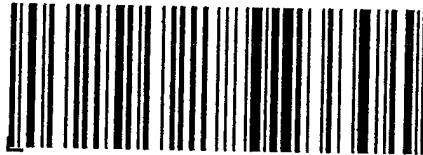
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7000 1670 0011 9499 6161

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Sent To: James H. Johnson  
Street, Apt. No., or PO Box No.: 7887 N. Cholla, Apt #1117  
City, State, ZIP+4: Tucson, AZ 85741  
PS Form 3800, May 2000 See Reverse for Instructions

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G

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FACSIMILE (202) 778-2201

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BRUSSELS, BELGIUM  
CHARLOTTE, NORTH CAROLINA  
HONG KONG  
KNOXVILLE, TENNESSEE  
LONDON, ENGLAND

KEVIN J. DUNLEAVY  
E-MAIL: KDUNLEAVY@HUNTON.COM

DIRECT DIAL: (202) 955-1928  
FILE NO.: 47382.000041

June 16, 2000

**CONFIDENTIAL**

Via UPS

Mr. John DiDomenico  
8810 East Bear Paw Place  
Tucson, Arizona 85749

Re: Declaration and Assignment for U.S. Patent Application  
Serial No. 09/457,391, Titled "Exhaust Opacity Measuring Device"  
(Attorney Docket No. 47382.000039)

Dear John:

Please find enclosed a copy of the above-identified patent application and Declaration and Assignment documents for your review and execution.

Craig Rendahl reviewed this application and indicated to us that in addition to the materials disclosed on the chart of potential prior art documents that we previously prepared and sent to you, we should obtain a copy of the Final Report CRC Project E-24-1, "Measurement of Exhaust Particulate Matter Emissions from In-Use Light-Duty Motor Vehicles in the Denver, Colorado Area," dated March 24, 1998. This document is a summary of the results of exhaust opacity measurements done with the so-called, "Classy Lady" diesel powered Cadillac Seville in 1997. We have now obtained a copy of this document.

In addition, in response to Mr. Rendahl's comments, we are investigating the potential prior art effect of an alleged commercialization of the exhaust opacity sensing capabilities by RSTi in the 1990's. Please provide us with any information you may be aware of in relation to this alleged commercialization, including details of the structure and capabilities of the device, when and where it may have been commercialized, what persons may have further knowledge and any other relevant information.

Please review the above-identified application and sign and return the enclosed Declaration for Patent Application and Assignment at your earliest convenience in the enclosed, self-addressed UPS envelope. Please return these documents to me no later than July 10, 2000.

HUNTON & WILLIAMS

Mr. John DiDomenico

June 15, 2000

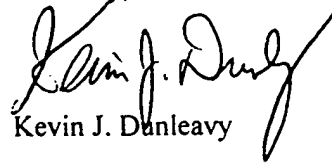
Page 2

Confidential

Please feel free to call me if you have any questions. I look forward to receiving the executed Declaration and Assignment. Once we receive these documents, we will proceed with the next application.

Best regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Danleavy", with a stylized flourish at the end.

Kevin J. Danleavy

Enclosures



H  
**Dunleavy, Kevin**

---

**From:** JDiDmenico@aol.com  
**Sent:** Friday, July 14, 2000 10:39 AM  
**To:** KDunleavy@hunton.com; CRendahl@spxateg.com  
**Subject:** Re: Declaration and Assignment Documents for U.S. Patent App. Ser. No . 09/45...

Dear Kevin:

At this time, I have not read or reviewed the opacity patent and it is very unlikely that I will be able to do a thorough review by next Monday. However, I will try but cannot guarantee that I can sign this application by that date.

Sincerely,

John DiDomenico

I

From: John DiDomenico [mailto:jdidomen@spxateg.com]  
Sent: Thursday, September 21, 2000 1:56 PM  
To: Cuneo, Chris; CRendahl@spxateg.com  
Cc: Gatto, Jim; Aksman, Stanislaus  
Subject: Re: Envirotest Patent Applications

Please, do NOT sent me any communications for any reason to  
any e-mail or  
street address that belong to SPX Corporation.

John

# HUNTON & WILLIAMS

1900 K STREET, N.W.  
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500  
FAX 202 • 778 • 2201

DEVIN S. MORGAN  
DIRECT DIAL: 202 • 955 • 1965  
EMAIL: dmorgan@hunton.com

January 23, 2001

Via Certified Mail

FILE NO: 47382.000060

Mr. John DiDomenico  
8810 E. Bear Paw Place  
Tucson, AZ 85749

Dear Mr. DiDomenico;

We have previously contacted you with regard to various patent related matters for Environmental Systems Products, Envirotech Systems Corp, and other related entities (collectively "ESP"). Specifically, your assistance is needed reviewing and executing various documents related to patent applications for technologies you helped pioneer while employed with one or more ESP related entities.

We have requested your assistance with review and execution of documents related to each of the following applications: "REMOTE EMISSIONS SENSING SYSTEM WITH IMPROVED NO<sub>x</sub> DETECTION," "VEHICULAR RUNNING LOSS DETECTION SYSTEM," "REMOTE EMISSIONS SENSING SYSTEM AND METHOD WITH A COMPOSITE BEAM OF IR AND UV RADIATION THAT IS NOT SPLIT FOR DETECTION," "REMOTE VEHICLE EMISSION SENSING DEVICE WITH SINGLE DETECTOR," "MULTILANE REMOTE SENSING DEVICE," and "EXHAUST OPACITY MEASURING DEVICE." However, you have been unresponsive to most of our correspondence. We have yet to receive the necessary documents from you in any of the above referenced cases.

Most recently, you expressed some concerns related to prior art for and commercialization of one or more inventions described in the applications listed above. Chris Cuneo contacted you via electronic mail on September 21, 2000 in an attempt to work with you to present the facts forming the basis of your concerns to the U.S. Patent and Trademark Office (PTO). Our hope was to amicably resolve your concerns, cite any necessary prior art to the PTO, and allow the legal scope of the patent applications to be determined by the PTO. You replied that you did not wish us to contact you at your place of business. However, you have refused to provide an alternate means of contacting you, as we requested. We are sending this letter to your residential address in hopes that you will be amenable to further communications through this channel.

In addition to renewing our prior requests, we request your assistance with an application for reissue of U.S. Patent No. 5,812,249, entitled "SPEED AND ACCELERATION

HUNTON &  
WILLIAMS

Mr. John DiDomenico

January 23, 2001

Page 2

MONITORING DEVICE USING VISIBLE LASER BEAMS. You are one of the inventors on this patent and previously executed a declaration and assignment relating to it. Because we are applying for a broadening reissue, a new declaration must be submitted. A copy of the issued patent, the reissue claims and the reissue declaration are enclosed for your review and signature. Please review the patent and claims, sign the declaration, and return it to me.

Patent rights and the administrative procedures for securing patent rights are costly and time sensitive. Any delay on your part may generate additional expenses for ESP and could jeopardize ESP's valuable patent rights. I understand that you may now have competing interests. I remind you of your continuing duty, pursuant your former employment, to assist ESP in securing its patent rights. As you may be aware, if you refuse to assist ESP, PTO rules provide a vehicle for protecting ESP's rights. We intend to take whatever steps are necessary on behalf of ESP to protect their rights. We continue to be willing to make every reasonable effort to resolve any issues you may have and seek a speedy resolution to this matter.

Please contact me at your earliest convenience so that we may work to a resolution of these matters. Thank you for your time and assistance.

Sincerely,

Hunton & Williams

A handwritten signature in black ink, appearing to read "D. S. Morgan", with a long, sweeping horizontal line extending to the right.

Devin S. Morgan

Z 597 421 763

US Postal Service

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John DiDomenico	
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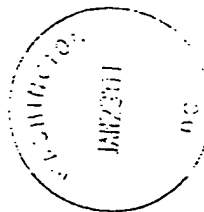
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**MAIL**

Mr. John DiDomenico  
8810 E. Bear Paw Place  
Tucson, AZ 85749

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Morgan



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*One Fountain Square  
11911 Freedom Drive  
Reston, Virginia 20190  
703 464 4800  
703 464 4895 fax  
www.mintz.com*

**Christopher Cuneo**

*Direct dial 703 464 8159  
ccuneo@mintz.com*

November 21, 2001

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
TRACKING No.: 7000-1670-0011-9499-6185**

John DiDomenico  
SPX Corp.  
2250 N. Dragoon Street  
Suite 100  
Tucson, AZ 85745

Re: U.S. Patent Application Serial No. 09/818,664  
Filed: March 28, 2001, which is a continuation of 09/621,869 filed July  
21, 2000 (abandoned), which is a continuation of 09/457,391 filed  
December 9, 1999 (abandoned), which claims priority from provisional  
application 60/111,959 filed December 11, 1998  
Inventor(s): John DiDomenico *et al.*  
Title: "EXHAUST OPACITY MEASURING DEVICE"  
Our Reference No. 23439-032-402

Dear John:

Enclosed is a copy of a patent application titled "Exhaust Opacity Measuring Device" (as filed) of which you are named as an inventor. Also enclosed are (1) Joint Declaration for Patent Application and Power of Attorney and (2) Assignment documents.

Further to communications that you have received relating to the above-identified patent family, kindly sign and date both the Declaration and Power of Attorney and Assignment documents and return them to us as soon as possible for filing with the U.S. Patent and Trademark Office. For your convenience, I have enclosed a self-addressed Federal Express envelope for expeditious return.

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

John DiDomenico  
November 21, 2001  
Page 2

If you have any questions regarding this matter, please do not hesitate to contact me at the telephone number listed above.

Very truly yours,



Christopher J. Cuneo

JGG/CJC:dms

Enclosures:

- Patent Application titled "EXHAUST OPACITY MEASURING DEVICE"
- Drawing Figures 1-4
- Joint Declaration for Patent Application and Power of Attorney
- Assignment
- Federal Express Return Envelope

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1. Article Addressed to:

John DiDomenico  
SPX Corp.  
2250 N. Dragoon St.  
Suite 100  
Tucson, AZ 85745

2. Article Number (Copy from service label)

7000-1670-0011-9499-6185

PS Form 3811, July 1999

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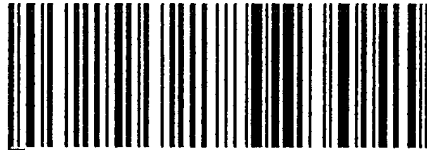
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7000 1670 0011 9499 6185

Sent To  
John DiDomenico  
Street, Apt. No., or P.O. Box No.  
2250 N. Dragoon St. Ste 100  
City, State, ZIP+4  
Tucson, AZ 85745  
PS Form 3800, May 2000 See Reverse for Instructions

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